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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 AMELIA FOOS, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 ANN, INC., a Delaware corporation doing
16 business as Ann Taylor Retail, Inc.,

17 Defendant.
18

Civil No. 11cv2794 L (MDD)

**ORDER GRANTING OBJECTOR'S
EX PARTE MOTION FOR
DISCLOSURE OF CLAIMS RATE
DATA [doc. #66]**

19 The Court previously found the settlement of this action to be fair, reasonable and
20 adequate. Plaintiff's counsel submitted a motion for attorneys' fees which remains pending.
21 Sarah McDonald, who objected to the class action settlement, now moves ex parte for the
22 disclosure of claims rate data in order for the Court to properly consider the attorneys' fees
23 requested. Claim members had until February 8, 2013, in which to submit claims for relief under
24 the settlement. Accordingly, the claims administrator has the data showing how many class
25 members requested a coupon under the settlement agreement.

26 In seeking disclosure of the number of claims submitted by class members, McDonald
27 contends the information would (1) assist the Court in reviewing the merits of the attorneys' fees
28 sought and (2) provide valuable information in general concerning class actions settlements,
particularly with the type of benefit obtained by class members here. But plaintiff opposes the

1 disclosure request as procedurally improper and irrelevant.

2 Since the filing of the ex parte motion, the Ninth Circuit Court of Appeals has addressed
 3 this specific issue of attorneys' fees in the context of a coupon settlement under CAFA, an issue
 4 of first impression. *See In re HP Inkjet Printer Litigation*, 2013 WL 1986396 (9th Cir. May 15,
 5 2013). In *HP Inkjet*, objectors contended that the attorneys' fees award violated CAFA,
 6 specifically 28 U.S.C. § 1712(a)-(c), which controls the calculation of attorneys' fees when the
 7 settlement contains an award of coupons to class members or injunctive relief or both. *Id.* The
 8 district court found the settlement was fair, reasonable and adequate, and by separate order,
 9 awarded attorneys' fees by applying the lodestar method to an estimated "ultimate value" of the
 10 settlement. The Court of Appeals reversed.

11 Section 1712(c) is the relevant portion of the statute in the present case because the
 12 settlement involves both an award of coupons and injunctive relief to class members, *i.e.*, a
 13 "mixed settlement":

14 If a proposed settlement in a class action provides for an award of coupons to class
 15 members and also provides equitable relief, including injunctive relief –

16 (1) that portion of the attorney's fee to be paid to class counsel that is based upon a
 17 portion of the recovery of the coupons shall be calculated in accordance with
 subsection (a); and

18 (2) that portion of the attorney's fee to be paid to class counsel that is not based
 19 upon a portion of the recovery of coupons shall be calculated in accordance with
 subsection (b).

20 Thus, "[t]he practical effect of § 1712(c) is that the district court must perform two
 21 separate calculations to fully compensate class counsel." *HP Inkjet* at *8. The first calculation is
 22 a determination of a "reasonable contingency fee based on the **actual redemption value of the**
 23 **coupons awarded.**" *Id.* (emphasis added.) The second calculation is a determination of "the
 24 reasonable lodestar amount to compensate class counsel for any non-coupon relief obtained." *Id.*

25
 26 Noting that "one of the main purposes of CAFA" is "discouraging coupon settlements",
 27 the appellate court pointed to the legislative history: "[T]he fee award should be based on the
 28 demonstrated value of coupons **actually redeemed by the class members.**" *Id.* at *10 (quoting

1 S. Rep. 109-14 at 30).

2 The *HP Inkjet* case held:

3 Under § 1712 of CAFA, a district court may not award attorneys' fees to class
4 counsel that are "attributable to" an award of coupons without first considering the
5 redemption value of the coupons. A district court may, however, award lodestar
6 fees to compensate class counsel for any non-coupon relief they obtain, such as
7 injunctive relief.

8 *Id.*


9 Here, objector seeks disclosure of claims rate data. Because under controlling law such
10 information will be necessary for the Court to undertake the appropriate review of plaintiffs'
11 attorneys' fees motion,

12 IT IS ORDERED:

- 13 1. Objector's ex parte motion for disclosure of claims rate data is **GRANTED**. [doc.
14 #66] Plaintiffs shall provide the claims rate data to objector and opposing counsel
15 on or before **May 24, 2013**.
- 16 2. Objector may file a response to plaintiff's motion for attorneys' fees within 10
17 days of the receipt of the claims rate data.
- 18 3. Plaintiff may file a reply to objector's response within 5 days of service of the
19 response.

20 **IT IS SO ORDERED.**

21 DATED: May 20, 2013

22 
23 M. James Lorenz
24 United States District Court Judge

25 COPY TO:

26 HON. MITCHELL D. DEMBIN
27 UNITED STATES MAGISTRATE JUDGE

28 ALL PARTIES/COUNSEL